

APPEAL NO. 022497
FILED OCTOBER 17, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on August 28, 2002. The hearing officer determined that the appellant (claimant) did not sustain an injury to her right shoulder/arm or neck on _____, in addition to her compensable injury to her right wrist and ankle. The claimant appeals that determination, contending that the hearing officer's decision is against the great weight and preponderance of the evidence and that the hearing officer erred in excluding evidence. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

The hearing officer's decision to exclude evidence that was not timely exchanged pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.13(c) (Rule 142.13(c)) was not error. The claimant asserted that she was discussing her case with an attorney, that he told her just shortly before the hearing that he would not represent her, that she therefore only had a short time to prepare and send everything, and that was why she was late in exchanging documents. To obtain reversal of a judgment based on the hearing officer's abuse of discretion in the admission or exclusion of evidence, an appellant must first show that the admission or exclusion was, in fact, an abuse of discretion and also that the error was reasonably calculated to cause and probably did cause the rendition of an improper judgment. Texas Workers' Compensation Commission Appeal No. 92241, decided July 24, 1992; *see also Hernandez v. Hernandez*, 611 S.W.2d 732 (Tex. Civ. App.-San Antonio 1981, no writ). Under the circumstances of this case, we find no abuse of discretion in the hearing officer's exclusion of the documents which were untimely exchanged.

We have reviewed the complained-of determinations and find that the hearing officer's Decision and Order is supported by sufficient evidence to be affirmed. Whether or not the claimant sustained an injury to her right shoulder/arm and neck on _____, in addition to the compensable right wrist and ankle injury presented a question of fact for the hearing officer. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a); Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). There was conflicting evidence presented on the disputed issue. It was for the hearing officer, as the trier of fact, to resolve the conflicts and inconsistencies in the evidence and to determine what facts had been established. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). Nothing in our review of the record reveals that the hearing officer's determination is so contrary to the great weight and preponderance of the evidence as to be clearly

wrong or manifestly unjust. As such, no sound basis exists for us to reverse that determination on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **AMERICAN PROTECTION INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Michael B. McShane
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Thomas A. Knapp
Appeals Judge